

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CRESTMARK, a Division of
MetaBank, National Association,

Plaintiff,

Case No. 20-cv-11396
Hon. Robert H. Cleland

v.

SIMON AUTOMOTIVE, LLC,
a Michigan limited liability company,
SIMONXPRESS PIZZA, LLC,
an Arizona limited liability company,
SIMON STORES CORPORATION,
a Michigan corporation,
SE CORPORATION OF MICHIGAN,
a Michigan corporation,
SIMON'S ENTERPRISE INC.,
a Michigan corporation,
643 TELEGRAPH, LLC,
a Michigan limited liability company,
PINKNEY PETROLEUM, LLC,
a Michigan limited liability company,
CACTUS SHELL LLC,
an Arizona limited liability company,
SIMON LAND DEVELOPMENT GROUP, LLC,
a Michigan limited liability company, and
FAWZI SIMON,
an individual,

Defendants.

**STIPULATION AND ORDER STAYING LITIGATION PURSUANT TO
SETTLEMENT AGREEMENT**

COMES NOW, Intervenor First Western Trust Bank (“**FWTB**”) and Defendants Fawzi Simon (“**F. Simon**”), Simonxpress Pizza, LLC, an Arizona limited liability company (“**S. Pizza**”), and Simon Enterprises, Inc., a Michigan corporation (“**SEI**” along with F. Simon and S. Pizza are, collectively, the “**Simon Parties**”), by and through their respective undersigned counsel, for their *Stipulation and Order Staying Litigation Pursuant to Settlement Agreement* (the “**Stipulation**”). In support of the Stipulation, FWTB and the Simon Parties (collectively, the “**Parties**”) stipulate as follows:

WHEREAS, on December 21, 2020, FWTB filed its Intervenor’s Complaint (the “**Complaint**”) to, *inter alia*, obtain a money judgment against the Simon Parties on account of two separate loan obligations each evidenced by separate loan, guaranty and collateral documents.

WHEREAS, on January 15, 2021, the Simon Parties filed their Answer to the Complaint.

WHEREAS, on February 18, 2021, FWTB’s *Motion for Summary Judgment on Claims I-III of the Complaint* (the “**MSJ**”) was fully briefed.

WHEREAS, on March 24, 2021, the Court vacated a previously set hearing on the MSJ.

WHEREAS, on April 9, 2021, the Parties entered into a Settlement Agreement that is effective as of that day (the “**Settlement Agreement**”).

WHEREAS, the Settlement Agreement requires that: (i) this case be stayed for ninety (90) days, *i.e.*, through July 8, 2021 (the “**First 90 Day Stay**”), so that the Simon Parties could, *inter alia*, sell certain of FWTB’s collateral; and (ii) *provided that* the Simon Parties performed their contractual duties during the First 90 Day Stay, that this case would be stayed an additional ninety (90) days, *i.e.*, through October 6, 2021 (the “**Second 90 Day Stay**”), so that the Simon Parties could, *inter alia*, make existing note payments to FWTB and refinance all outstanding obligations due and owing to FWTB.

WHEREAS, the Settlement Agreement provides a mechanism that if there is ever a default thereunder that FWTB may request the Court enter the Confession of Judgment in its favor against the Simon Parties. Alternatively, if there is never any default under the Settlement Agreement and the Simon Parties perform thereunder then the obligations to FWTB will be satisfied and this action will be dismissed *with prejudice* in accordance with the terms of the Settlement Agreement. Thus, at most, the Settlement Agreement requires that this action be stayed through October 6, 2021, so that FWTB may request entry of a judgment or that the Simon Parties can perform thereunder. Accordingly, the Settlement Agreement paves the way for the resolution of all issues in this case without the need for further discovery, a hearing on the MSJ or a trial.

NOW THEREFORE, the Parties stipulate and agree as follows:

1. Stay of Litigation. Pursuant to the terms of the Settlement Agreement, the Parties request that the Court enter an order staying this action and all deadlines arising herein through July 8, 2021.

Dated April 15, 2021

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--and--

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APPROVED:

s/Robert H. Cleland
Honorable Judge Robert H. Cleland

Dated: April 29, 2021